

PROCEEDINGS BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NO. 49

Case No. 49

Referee Fred Blackwell

Labor Member: S. V. Powers

Carrier Member: J. H. Burton

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned or otherwise permitted outside forces to "...convert the Columbus Diesel Shop to the C&S Shop...including the construction of a Pre Engineered Metal Building (Armco type 50' x 100')." beginning April 13, 1987 (System Dockets CR-4029 and CR-4030).**
- (2) The Agreement was further violated when the Carrier did not confer with the General Chairman prior to executing a contract with the outside concern to perform scope covered work.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B employes R. N. Williams, C. T. Julian, L. J. Sacher, G. V. Pfistner, R. E. Marvin and J. K. Lafferty shall each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by the outside forces, through the completion of their performing the work identified in Part (1) above.**

FINDINGS:

Upon the whole record and all the evidence, and after hearing on August 17, 1989, in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject

**FRED BLACKWELL
ATTORNEY AT LAW**

**19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000**

matter.

DECISION:

Claims denied.

OPINION

This case arises from claims filed by five (5) Employees on the Bridge and Building (B&B) Seniority Roster, Columbus Division, Columbus, Ohio, on the basis of allegations that the Carrier violated the BMW Scope Rule by its action of permitting an outside contractor (the Righter Company) *"to convert the Columbus Diesel Shop to the C&S Shop...including the construction of a Pre Engineered Metal Building (Armco type 50' x 100')"* and by failing to act in good faith on the requirement that the Carrier give the General Chairman advance written notice of its intention to contract out the diesel shop project.

The Organization submits that the disputed work is encompassed within the express, explicit text of the scope of the Agreement; and that although the Carrier gave notice of its intention to contract out the diesel shop project, the Carrier was guilty of bad faith in the administration of its notice to the General Chairman.

The Carrier submits that its action in contracting out the conversion of the Diesel Shop, Buckeye Yard, Hilliard, Ohio, to a Communication and Signal Shop did not violate the Agreement, and that on that basis the claims should be denied. The Carrier more specifically asserts that:

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

SBA No. 1016 / Award No. 49 - Case No. 49

1. The construction project entailed the construction of an addition to the existing building; the building addition was a pre-engineered metal building with dimensions of 50' x 100'. The existing building was stripped and completely renovated, which required extensive electrical, plumbing, and masonry and mechanical work to house the new signal shop, training center and storage. The new facility was equipped with a modern material handling and storage system as well as a new signal wiring operation and sprinkler system. The project cost in excess of one million dollars.

2. Although B&B Employees have performed general building maintenance and minor remodeling work, the Carrier did not have the necessary equipment or manpower to complete a major construction project as involved herein, nor could the Carrier piecemeal such a massive project. In addition, the warranties on the building addition, as well as material handling systems and equipment installations would have been jeopardized if the project had been performed in-house.

* * * * *

From full review and assessment of the whole record, the Board finds and concludes that the record does not establish a violation of the BMW Scope Rule on the part of the Carrier. The claims will therefore be denied on this basis.¹

The Board notes that the Carrier's conversion of the Diesel Shop at Buckeye Yard, by the Righter Company, during the period April 13 to May 8, 1987, appears to

¹ All prior authorities submitted for the record have been considered and analyzed in arriving at this decision.

have been accomplished in a manner consistent with the information provided to the Organization in the Carrier's notice letter dated March 10, 1987:

"This is to advise that we intend to convert the Columbus Diesel Shop to the C&S Shop, which will involve contracting site work and building rehabilitation, including the construction of a Pre Engineered Metal Building (Armco type 50' x 100').

The estimated cost of the contract work is \$1,174,132. The project will begin in April and be completed by September 1987.

Aside from the fact that the work cannot be piecemealed, the Company does not have the necessary equipment or manpower available to complete construction within the allotted time frame. As information, all B&B employees on the Columbus Division will be recalled from furlough during the period of this contract."

The record persuades that the Carrier needed to have the conversion project completed during the milder weather conditions of Spring, Summer, or Autumn. Therefore, the Carrier was not required to piecemeal the work of the conversion project in order to have parts of the work performed by the Carrier's B&B Employees. This would have entailed the Carrier being required to give the conversion project priority, in the assignment of overtime, over work usually assigned to its B&B forces.

Accordingly, on the basis of the record as a whole, the Board finds that the claims should be denied for lack of the requisite record support.



Fred Blackwell
Chairman / Neutral Member
Special Board of Adjustment No. 1016

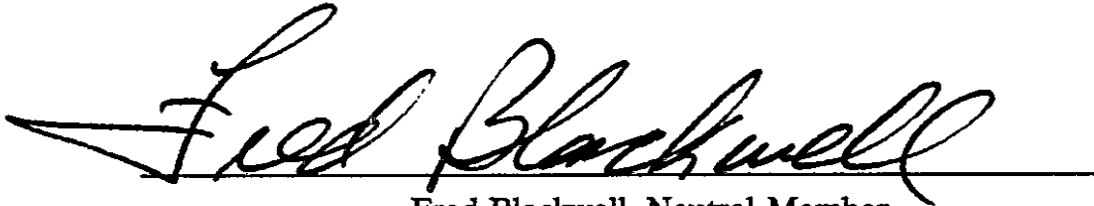
April 12, 1994.

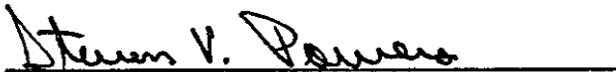
FRED BLACKWELL
ATTORNEY AT LAW

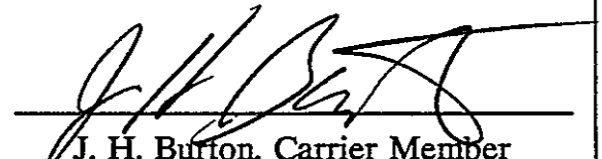
18129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

AWARD

The claims are hereby denied for lack of the requisite record support.
BY ORDER OF SPECIAL BOARD OF ADJUSTMENT NO. 1016.


Fred Blackwell, Neutral Member


S. V. Powers, Labor Member


J. H. Burton, Carrier Member

Executed on 5/3, 1994

Conrail\1016\49-49.412

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000